Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-344

WILLIAM RENFORTH, M.D. .... Petitioner

-v-

FAYETTE MEMORIAL HOSPITAL ASSOCIATION, INC., BOARD OF TRUSTEES FAYETTE MEMORIAL HOSPITAL ASSOCIATION, INC., EXECUTIVE COMMITTEE OF THE BOARD OF TRUSTEES OF FAYETTE MEMORIAL HOSPITAL ASSOCIATION, INC., EXECUTIVE COMMITTEE OF THE MEDICAL STAFF OF FAYETTE MEMORIAL HOSPITAL, EARL BRANSON, JOHN D. DARCY, K. DALE FORD, RUSSELL ARCHIBOLD, CHARLES R. BOTTORFF, MARTHA F. KENNEDY, LA VERNE L. MARSH, F. B. MOUNTAIN, J. M. LOCKHART, ALBERT ROBINSON, WILLIS ROSE, HENRY RUHL, KATHLENE SHAVER, DALE SLONEKER, EDWARD THIELKING, WILLIAM THOMAS, R. HIRSCH, R. TAUBE, Z. MUFTI, B. W. SANDERS ..... Respondents

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BRIEF IN OPPOSITION

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Questions Presented:

1. Petitioner's questions 1 and 2, which are essentially the same, are irrelevant to the disposition of this case.

2. Petitioner's question 3 fails to indicate any connection between the actions of the State and the actions of the hospital.

3. Respondent does not feel that question 4 should properly be reached on the merits by the Court.

4. The "fact" assumed by question 5 was never demonstrated or determined below, but even if it had, Petitioner has never shown any connection between actions of the State and the actions of the hospital.

Statement Of Case:

The facts stated by Petitioner as "The Factual Background" (Petition, pp. 10-18) are seriously misleading. As presented by Petitioner they attempt to establish a factual basis for Petitioner's arguments that he was denied basic due process and that government intervention in hospital operations converts the hospital's actions into state action. It is necessary for Respondent to restate the facts on each issue because Petitioner's presentation of "The Factual Background" is so distorted it cannot form the basis for a fair determination in this Court. The facts as to each issue are discussed separately. Citations to "R" are to the transcript of the record below.

I. Process Accorded Dr. Renforth

Petitioner attempts to create the impression that Dr. Renforth was virtually "railroaded" off the staff. For example, Petitioner states, "The Petitioner was never given an opportunity to defend himself. No medical staff committee ever heard his plea, as they

were required to do under the By-Laws." (Petition, p. 12)

The fact of the matter, however, is that Dr. Renforth had several opportunities to be heard, including an appearance before the Joint Conference and Professional Committee, a committee composed of representatives of the Board and the Medical Staff which considers matters of common interest to both groups. It was expressly convened on August 21, 1975 "to consider the case of Dr. Renforth and his requirement to furnish malpractice insurance." (R, pp. 411, 445) At that meeting Dr. Renforth appeared with his attorney, Loren Marsh. They were afforded an opportunity to state their position on this issue. Mr. Marsh's acknowledged role at this meeting as counsel for Petitioner was to try to convince the committee to advise the board not to enforce the by-law, and Dr. Renforth was encouraged to explain his position. (R, pp. 380-85.)

Petitioner's other assertions as to the lack of process accorded him are just as misleading. They

consist of his own contentions as to various facts, many of which were disputed and were not accepted by the trial court or the Indiana Court of Appeals. A brief summary of these undisputed facts or, where disputed, the findings by the trial court and the Court of Appeals of Indiana follows.

Dr. Renforth himself wrote the by-laws containing the voting requirements which he claims were violated. (Petitioner's Appendix A, p. 4-A) Dr. Renforth was present and voting at the Medical Staff meeting which adopted the recommendation of the Indiana Hospital Association that staff physicians be required to show proof of insurance coverage for medical malpractice. (Petitioner's Appendix A, p. 4-A) The minutes of the meeting show the motion carried 8 votes in favor, 4 against with no recorded abstentions or members not voting. Dr. Renforth did not object to the vote at that time nor until he filed his suit over a year later did he ever contend that the vote adopting the amendment was improper. He never offered evidence at trial that sustained his argument that less than two-thirds of the staff present had not

approved the amendment. To the contrary it was established that while more than 12 members were shown on the minutes as "present" this meant only that they were present at some time during the meeting, not at the time the vote was taken. (Petitioner's Appendix A, pp. 4-A, 5-A.) The Board of Trustees of Fayette Memorial Hospital adopted the recommendation of the Medical Staff which it had the power to do in its own discretion. (Petitioner's Appendix A, p. 6-A)

Dr. Renforth submitted his application for reappointment for 1976 without evidence of malpractice coverage and with a certification that he had read the hospital's by-laws and would be bound by them. (R, p. 254-55.) He was fully aware of the review process for his application and even sat on one of the committees which reviewed it. (R, pp. 501-03.) He was formally notified of the recommendation pending against him in letters from the Executive Committee in February 1976 and appeared himself before that Committee on February 17, 1976 at which time he argued his position again. (R, p. 511.) When

the Board finally voted to renew staff privileges for all other physicians except Dr. Renforth on March 30, 1976, Petitioner had had almost a full year to argue his position, to purchase medical malpractice insurance or to apply for staff privileges at another hospital. To this day he is free to seek reappointment to the staff of Fayette Memorial Hospital if he submits proof of insurance coverage for medical malpractice, or to any hospital in the state which does not require malpractice insurance. To say that, "the Respondent hospital simply decided to rid itself of the Petitioner and be done with it," (Pet. p. 12) is unjustified and misleading.

II. Hospital Finance and Governance

Contrary to Petitioner's allegations, there is no "vast interdependence" of Fayette Memorial Hospital and State and Federal Government, (Pet. p. 13) nor does any government dictate the internal organization of the hospital's administration or staff. (Pet. p. 18) The members of the hospital's board of trustees who are elected by local government bodies from the general public exercise their own judgment and do not

report back to or represent those government bodies. The figures on public funding cited by Petitioner (Pet. p. 13) must be placed in perspective. The aid from the Hill-Burton program amounted to 39% of construction funds in 1965. City and County contributions in 1967 amounted to a trifling percentage of operating expenses and had no effect on the policy complained of. These contributions occurred ten years before adoption of the by-law requiring malpractice insurance. The percentages testify to the fact that the hospital is not a shell through which the government operates.

The assertion by Petitioner that government regulation, admittedly complex and extensive, caused or indeed had anything whatsoever to do with the hospital's adoption of the malpractice insurance requirement is without a shred of evidence to support it. Respondent has consistently shown that its policy change was initiated by a joint recommendation from the Indiana State Medical Association and the Indiana Hospital Association and that it was motivated by sound, prudent, and fair considerations which were not

based in any way on government regulations. (Petitioner's Appendix A, pp. 2-A and 6-A.) It was undisputed, as a factual matter, that there is no connection whatever, of any kind, between the government regulations and contributions and the hospital by-law of which Dr. Renforth complains.

Reasons For Denying Writ: This is an inappropriate case for certiorari because:

1. No factual evidence has been advanced and sustained anywhere on the record to support Petitioner's assertion of a connection between the various government regulations on the one hand and the hospital's policy requiring medical malpractice insurance on the other.

The record below is heavily devoted to evidence on such factual issues as how many doctors were present at the time the vote was taken adopting the amendment to the by-laws and whether Petitioner's own acts constituted a failure to avail himself of further administrative hearings. There was no development of evidence or legal argument in the

record below as to what kind or amount of connection may be required between government funding and regulations imposed upon the health care provider and the malpractice insurance policies of that provider.

Instead, the Petitioner asserts that the regulations and funding of Medicare, Medicaid, Hill-Burton and other government programs render "action by that hospital corporation action by the state." (Pet. p. 13) The assertion is unqualified, and its implications would be boundless. The issue was not argued extensively; the case was decided by an intermediate state court of appeal rather than after full argument before the highest court of the state, and the record provides nothing on which this Court might analyze this question. Even an affirmance of the decision below would give little guidance in the area.

2. The question of state action or no state action in the hospital's acceptance of public funds is irrelevant to the determination of this dispute.

Even if this Court wished to adopt the position of the Fourth Circuit that receipt of governmental funds results, per se, in state action on the part of the

recipient as to the activity complained of, both the substantive policy of the hospital in requiring medical malpractice insurance and the procedure it used in examining Dr. Renforth's application lacking proof of the insurance were fair and reasonable by any standard. The issue of what constitutes state action in the health care context and what nexus if any must be shown should await a case in which the decision would make a difference to the outcome of the case.

3. The hospital's policy of requiring medical malpractice insurance does not violate substantive due process requirements whether the hospital board is judged as an arm of the state or as a purely private institution and there is no conflict in the decisions on this specific issue.

There are only three cases in which courts have reviewed a hospital's decision to require its physicians to carry malpractice insurance. In Pollock v. Methodist Hospital, 392 F.Supp. 393, (E.D. La. 1975) the trial court held the private hospital to the state action standard and went on to hold that the requirement of malpractice coverage was prudent,

reasonable, and fully in accord with the standards of due process. In the most recent case other than the present one, Holmes v. Hoemako Hospital, 573 P.2d 477 (Ariz. 1978), the court analyzed at great length the rationale for a hospital requiring medical malpractice insurance of staff physicians and upheld the denial of privileges to a doctor who refused to purchase any. Rosner v. Peninsula Hospital District, 224 Cal.App.2d 115, 36 Cal. Rptr. 332 (1964), not cited by Petitioner to support his case, is contra but was decided under a California statute governing only public hospitals. On this issue of the validity of requiring malpractice insurance there is no conflict in holding that such a requirement is neither arbitrary, caprious, or unreasonable.

4. Petitioner was clearly afforded numerous hearings with and without his counsel present and was unrestrained in his right to present and argue his position fully satisfying the requirements of procedural due process.

Following his submission of an application for reappointment which lacked evidence of malpractice

insurance coverage, Petitioner was afforded several hearings which approached the "mini-trial" level of procedure even though the only issue to be determined was the simple factual question of whether or not he had presented evidence of malpractice insurance coverage. These are summarized at pages 1-3 of this Brief and need not be repeated here. Despite his assertions otherwise, the resolution of Petitioner's case does not turn on legal questions of standards of procedural due process.

5. The decisions of the lower court follow squarely and exactly the precedents of this Court in Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974) and the Seventh Circuit in Doe v. Bellin Mem. Hosp., 479 F.2d 756 (7th Cir. 1973) authored by the then Circuit Judge John Paul Stevens. Even though there may be a conflict on the limited issue of whether receipt of public funds renders an otherwise private hospital a public entity for state action purposes between this case and those of the Fourth Circuit, this case does not afford a suitable vehicle for resolving that conflict. Substantive and procedural due process were

accorded here, and Petitioner failed to develop a factual basis on which to analyze and decide the question of what nexus if any should be required between requiring malpractice insurance and the governmental funds and regulations claimed to constitute the grounds for finding state action.

Conclusion

For the reasons stated hereinabove, a Writ of Certiorari should not issue to review the judgment and opinion of the Court of Appeals of Indiana.

Respectfully submitted,

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